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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/790,422 | 03/01/2004 | Scott G. Manke | 040014-0192 | 6921 |
| 26371 | 7590 | 12/09/2005 | EXAMINER | |
| FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308 | | | SMITH, RICHARD A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2859 | |

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,422

Applicant(s)

MANKE, SCOTT G.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 11-13 are objected to because of the following informalities:

Claims 11-13 are objected to under 35 CFR §1.75(b) since claims 11-13 are duplicates of claims 2-4, respectively.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5-7 and 10 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2,426,927 to Ganson in view of JP 09056289 to Takeuchi.

Ganson discloses most of the limitations of claims 1, 7, and 10 including a range indicator on a top portion of the container and adjacent to the cap. See the arrows of figure 1, column 1, lines 30-56 and column 2, lines 20-25 and the discussion with respect to the indicators

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may be in the form of colored lines or of any other appropriate character in column 2, lines 49-51.

Ganson does not disclose the range indicator being on a horizontal top portion of the container and the visual indicator being elongated and having a second or one end narrower than a first or another end

Takeuchi discloses a container having a cap located on a horizontal top portion of a container sized to accommodate the feeding of large animals. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container including the top portion, taught by Ganson, to be a large container having a horizontal top portion, as taught by Takeuchi, in order to allow a user to have enough milk to feed a large animal.

With respect to the indicator being elongated and having a second or one end narrower than a first or another end: Ganson discloses that the indicators may be in the form of colored lines or of any other appropriate character (column 2, lines 49-51). Therefore the limitations of the indicator being elongated and having a second or one end narrower than a first or another end, as claimed by Applicant, are considered to be equivalent to the range indicator, as disclosed by Ganson, since: 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained if one is used instead of the other, as long as the user can gauge the degree of sealing, as already taught by Ganson, 2) the elongated range indicator with a narrower end claimed by Applicant and the range indicator used by Ganson are well known alternate types of indicators that will perform the same function, if one is replaced with the other, of providing a visual range to gauge the degree of sealing, and

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3) the use of the elongated range indicator is considered to be nothing more than the use of one of numerous and well known alternate types of indicators that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to indicate the degree of sealing, as already suggested by Ganson in column 2, lines 49-51.

4. Claims 2-4, 8, 9 and 11-13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ganson and Takeuchi, as applied to claims 1, 5-7 and 10 above and further in view of U.S. 5,356,012 to Tang et al.

Ganson and Takeuchi teach all that is claimed as discussed in the above rejections of claims 1, 5-7 and 10 except for the visual indicator being molded on the cap, the range indicator being molded on the container, the range indicator is one of a molded portion (claim 8 only), a decal, a sticker, a label and a printing.

Tang et al. discloses a container having indicators that can be molded onto or printed thereon or in the form of a sticker, i.e., label (column 7, lines 24-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container and cap, taught by Ganson, to include molded visual indicators and molded, decaled, stickered, labeled or printed range indicators, as taught by Tang et al., since Tang et al. discloses that these may be used in the alternative and since molded would allow for cheaper construction and indicia that will resist abrasion and wear, and since printed or decaled or stickered would allow easier adjustment to accommodate variations to the sealing between the container and cap; or to allow retrofitting to existing containers.

Response to Arguments

5. Applicant's arguments with respect Dreps and Bernas have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's arguments filed with respect to Ganson and the elongated range indicator and Ganson in combination with Tang have been fully considered but they are not persuasive.

With respect to the argument addressing the elongated range indicator having two ends wherein one is narrower than the other: This argument is not persuasive since Ganson discloses that the indicator can be of any other appropriate character (column 2, lines 49-51).

With respect to Ganson in view of Tang and no teaching, suggestion or motivation to combine: The Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209

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(CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case, the knowledge would be available to one of ordinary skill in the art: Ganson discloses a container having indicators and discloses that the indicators can be modified. Tang et al. also discloses a container having indicators and teaches that the indicators can be alternatively formed including molded, printed, stickered. Since both involve and teach modifications to the indicators on a container then it appears to the examiner that the knowledge would be available to one of ordinary skill in the art for the reasons as described in the applied rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related indicators and methods or components thereof.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Alexander Smith
Primary Examiner
Technology Center 2800

RAS
December 7, 2005